



## IN THE 22ND JUDICIAL CIRCUIT, CITY OF ST LOUIS, MISSOURI

Judge or Division: MICHAEL KELLAN MULLEN	Case Number: 1822-CC11098	<i>RECEIVED SEP 12 2018 COLE COUNTY SHERIFF'S OFFICE</i>  <span style="float: right;">(Date File Stamp)</span>
Plaintiff/Petitioner: ELMORE BIBBS	Plaintiff's/Petitioner's Attorney/Address PETER P FIORE JR. 904 SOUTH 4TH STREET SUITE 302 ST LOUIS, MO 63102	
vs. Defendant/Respondent: LIBERTY MUTUAL INSURANCE COMPANY	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101	
Nature of Suit: CC Breach of Contract		

**Summons in Civil Case**The State of Missouri to: **LIBERTY MUTUAL INSURANCE COMPANY**

Alias:

CSC LAWYERS INC SERVICE CO  
221 BOLIVAR  
JEFFERSON CITY, MO 65101**COLE COUNTY, MO**

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

**August 29, 2018**

Date

Clerk

Further Information:

**Sheriff's or Server's Return****Note to serving officer:** Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the defendant/respondent.  
 leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with \_\_\_\_\_, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.

(for service on a corporation) delivering a copy of the summons and a copy of the complaint to: \_\_\_\_\_ (name) \_\_\_\_\_ (title).

other: \_\_\_\_\_

Served at \_\_\_\_\_ (address)

in \_\_\_\_\_ (County/City of St. Louis), MO, on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

**Must be sworn before a notary public if not served by an authorized officer:**

(Seal)

Subscribed and sworn to before me on \_\_\_\_\_ (date).

My commission expires: \_\_\_\_\_

Date

Notary Public

**Sheriff's Fees, if applicable**

Summons \$ \_\_\_\_\_

Non Est \$ \_\_\_\_\_

Sheriff's Deputy Salary \$ \_\_\_\_\_

Supplemental Surcharge \$ 10.00

Mileage \$ \_\_\_\_\_ (\_\_\_\_\_ miles @ \$.\_\_\_\_\_ per mile)

Total \$ \_\_\_\_\_

A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

**Document Service**

Liberty Mutual Insurance Co C/O Csc Lawyers Inc  
Serv Co - Commercial/Business, Document Service  
301 W High St, Jefferson City, Mo  
St. Louis City Cc 1822-Cc11098 () Civil - Summons  
Plaintiff: Elmore Bibbs  
Defendant: Liberty Mutual Insurance Co

Date Received  
09/12/2018  
Return By  
09/28/2018

Place of Employment:

Served by \_\_\_\_\_

Date \_\_\_\_\_

Time \_\_\_\_\_



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Alias:

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221 BOLIVAR  
JEFFERSON CITY, MO 65101**

**COURT SEAL OF****CITY OF ST LOUIS****COLE COUNTY, MO**

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Served at \_\_\_\_\_ (address)

in \_\_\_\_\_ (County/City of St. Louis), MO, on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

**Must be sworn before a notary public if not served by an authorized officer:**

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Subscribed and sworn to before me on \_\_\_\_\_ (date).

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Non Est \$ \_\_\_\_\_

Sheriff's Deputy Salary \$ \_\_\_\_\_

Supplemental Surcharge \$ 10.00 \_\_\_\_\_

Mileage \$ \_\_\_\_\_ (\_\_\_\_\_ miles @ \$.\_\_\_\_\_ per mile)

Total \$ \_\_\_\_\_

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IN THE CIRCUIT COURT OF ST. LOUIS CITY  
STATE OF MISSOURI

ELMORE BIBBS

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE

Defendant.

Serve: Registered Agent

CSC-Layers Incorporating Service Co.  
221 Bolivar  
Jefferson City MO 65101

Cause No.

**PETITION****COUNT I-VEXATIOUS REFUSAL TO PAY**

COMES NOW Plaintiff Elmore Bibbs, by and through his attorneys, and for his Count I of his Petition against Defendant, Liberty Mutual Insurance (hereafter "Liberty") alleges and states as follows under Count I of his claim:

1. Plaintiff is a resident of the City of St. Louis, Missouri wherein this cause of action arose.
2. Defendant Liberty Mutual Insurance, now, and was at all times mentioned, a foreign registered insurance company doing business in St. Louis, State of Missouri, by selling and issuing policies of insurance.
3. Plaintiff received a policy (#H35243016917-70), with an effective date of May 29, 2015, from Defendant for insurance coverage on real and personal property located at 2714 Geyer Avenue, St. Louis MO 63104.

**EXHIBIT A**

4. The total policy coverage for "Dwelling with Expanded Replacement Cost" was \$357,600.00 and "Personal Property with Replacement Cost" coverage was \$268,200.00.
5. On or about July 4, 2015 Plaintiff's property sustained fire damage which resulted in damage to the structure and personal property.
6. Plaintiff paid the required premiums under the policy.
7. The policy of insurance was continuously in full force and effect from the time of its issuance to the date of the loss.
8. For and in consideration of a stipulated premium on the policy of insurance Defendant did agree to provide extensive insurance coverage for Plaintiff.
9. On or about July 8, 2015 Plaintiff made a claim under his policy, being Claim No. 032272912-01.
10. Defendant stated the replacement cost value was \$180,113.70.
11. It is Plaintiff's belief that the replacement content costs are approximately \$268,200.00.
12. On or about January 5, 2016 Defendant issued a check for personal property loss in the amount of \$40,244.23. According to the following recapitulation:

Personal Property Total Loss  
\$72,438.68 RCV  
\$21,881.02 Less Recoverable Depreciation  
\$50,557.66 ACV  
\$10,313.43 Less Prior Payments  
\$40,244.23 Proposed Supplemental Net ACV Payment to Elmore Bibbs

Personal Property EMS Vendors  
\$16,185.36 My Service Co LLC Hard Goods Estimate (paid)  
\$3,254.12 My Service Co LLS Debris Removal Estimate (paid)  
\$1,645.15 My Service Co Garment/Textile Estimate (paid)  
\$21,084.63 Total Paid

Personal Property Claim Overall  
 \$93,523.31 RCV  
 \$21,881.02 Less Recoverable Depreciation  
 \$71,642.29 ACV  
 \$10,313.43 Less Prior Payments to Elmore Bibbs  
 \$21,084.63 Less Prior Payments to My Service Co LLC  
 \$40,244.23 Proposed Supplemental Net ACV Payment Due to Elmore Bibbs

13. Defendant issued checks on the dwelling/structural damage portion of the claim as follows.
  - a. September 18, 2015 for \$1,645.15
  - b. February 25, 2016 for \$20,369.19
  - c. February 11, 2016 for \$58,545.62
  - d. September 18, 2015 for \$575.56
  - e. July 20, 2015 for \$675.00 to AM Richards Glass Co.
14. On or about August 12, 2015 Defendant informed Plaintiff that a check in the amount of \$69,978.25 was issued, payable to Edwin-Claude Inc, & Bank of America NA & Elmore Bibbs.
15. On October 20, 2015 Defendant informed Plaintiff that the aforesaid check for \$69,978.25 was based on the following recapitulation:

Replacement Cost Value \$190,650.02  
 Less Depreciation (75,975.21)  
 Actual Cash Value \$114,674.81  
 Less Deductible (35,760.00)  
 Net Claim \$78,914.81  
 Total Recoverable Depreciation 75,975.21  
 Net Claim if Depreciation is Recovered \$154,890.02

\$190,650.02 LLA Peterson Supplemental Estimate  
 \$-75,975.21 Less Recoverable Depreciation when work is done  
 \$-35,760.00 Less Deductible

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\$ 78,914.81 ACV - Actual Cash Value Supplemental Estimate  
\$-69,978.25 Less ACV - Actual Cash Value Original Payment

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\$ 8,936.56 Supplemental ACV Payment issued  
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16. Defendant has denied full coverage under the policy.
17. Defendant has failed and refused and still fails and refuses to pay the balance of the claim despite the demand of Plaintiff.
18. Plaintiff, since Defendant became obligated to pay, is entitled to interest on said amount at the legal rate per annum from and after Defendant became obligated to pay on the aforesaid policy.
19. Defendant's refusal to pay the loss sustained by Plaintiff is vexatious and without reasonable cause or excuse and is in violation of the provisions of said policy of insurance; that Plaintiff is entitled to damages in the amount of 20% of the first \$1,500.00 due and owing Plaintiff and 10% of the remaining amount due and owing, plus a reasonable attorney's fee, all pursuant to §375.420 R.S.Mo.
20. Plaintiff is entitled to pre-judgment interest according law for the aforesaid loss.

WHEREFORE, Plaintiff prays for judgment from Defendant on his claim; for interest thereon at the legal rate, from the date Defendant was obligated to pay; for vexatious penalties of 20% of the first \$1,500.00 of the amount due and owing herein and 10% of the remaining amount due and owing; for reasonable attorney's fees incurred and expended; for pre-judgment interest according to law; which totals greater than \$25,000.00 and for such further relief as the court deems just and proper under the premises.

**COUNT II - BREACH OF CONTRACT**

COMES NOW Plaintiff and for his cause of action against Defendant under Count II of his Petition, states and alleges to the court as follows:

21. Plaintiff incorporates all of the allegations contained in paragraphs 1-20 under Count I of his Petition and incorporates them herein by this reference as if fully set forth under Count II hereof.
22. The policy of insurance was continuously in full force and effect from the time of its issuance until the date of loss.
23. Plaintiff was at all times the named beneficiary under the policy of insurance.
24. The insured complied with all terms and conditions of said policy.
25. Defendant has denied coverage under the policy for the remaining damage and has refused to pay Plaintiff for a total loss under the aforesaid policy.
26. Defendant continues to refuse to pay Plaintiff despite the demand of Plaintiff.
27. As a direct and proximate result of Defendant's breach of the aforesaid contract, Plaintiff has sustained damages in the sum greater than \$25,000.00.
28. Plaintiff is entitled to pre-judgment interest against Defendant for the aforesaid breach of its contract according to law.

WHEREFORE, Plaintiff prays for judgment against Defendant in the sum greater than \$25,000.00 together with interest thereon, under Count II of his Petition that Plaintiff is entitled to prejudgment interest according to law under Count II of his Petition; and for such further relief as the court deems just and proper under Count II.

/s/ Peter P. Fiore, Jr.  
PETER P. FIORE, JR., #31650  
JEFF WEISMAN, #34075  
Attorneys for Plaintiff  
904 S. 4<sup>th</sup> Street, Suite 302  
St. Louis, MO 63102  
Phone: 314-231-2020 Ext. 103  
Fax: 314-231-2016  
Email: [cohenstonepf@sbcglobal.net](mailto:cohenstonepf@sbcglobal.net)  
[jeff@jweismanlaw.com](mailto:jeff@jweismanlaw.com)